

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM G. SUMMERS,	§
	§ No. 467, 2006
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 9704012286
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 14, 2006

Decided: January 29, 2007

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices

ORDER

This 29th day of January 2007, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, William G. Summers, filed an appeal from the Superior Court's July 31, 2006 order denying his fourth postconviction motion pursuant to Superior Court Criminal Rule 61 and its August 23, 2006 order denying his motion for reargument. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's

judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) In January 1999, Summers was found guilty in a Superior Court bench trial of Robbery in the First Degree, Assault in the Third Degree, and Misdemeanor Theft. He was sentenced as a habitual offender to life imprisonment.² On direct appeal, this Court affirmed Summers' convictions with the exception of the misdemeanor theft conviction, which was inclusive of the robbery conviction and, therefore, in violation of the rule against double jeopardy.³ On remand, the Superior Court voided Summers' theft conviction and sentence.

(3) In this appeal, Summers claims that he was improperly sentenced as a habitual offender because one of the predicate offenses offered by the State to support its habitual offender petition had been committed when he was a juvenile.

(4) This is Summers' fourth postconviction motion pursuant to Rule 61. Summers also previously filed a motion to correct his sentence pursuant to Superior Court Criminal Rule 35(a) on the same ground he

¹ Supr. Ct. R. 25(a).

² Del. Code Ann. tit. 11, § 4214(b).

³ *Summers v. State*, Del. Supr., No. 563, 1999, Walsh, J. (Sept. 15, 2000).

asserts here.⁴ As such, Summers' latest postconviction motion is not only time-barred,⁵ it is procedurally barred as formerly adjudicated.⁶ Moreover, there is no evidence of a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.⁷ Because the Superior Court did not err or abuse its discretion when it denied Summers' latest postconviction motion, there was accordingly no basis upon which to grant Summers' motion for reargument.

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:
/s/ Myron T. Steele
Chief Justice

⁴ *Summers v. State*, Del. Supr., No. 238, 2004, Steele, C.J. (Sept. 20, 2004) (This Court held that Summers was properly sentenced as a habitual offender because, although he had committed one of his predicate offenses as a juvenile, his conviction for that offense occurred after he had become an adult).

⁵ Super. Ct. Crim. R. 61(i) (1).

⁶ Super. Ct. Crim. R. 61(i) (4).

⁷ Super. Ct. Crim. R. 61(i) (5).